

1 Presumably, there's going to be some evidence offered
2 to satisfy the Copexa factors. I don't know how a
3 release can otherwise be approved.

4 THE COURT: Well, it's -- it's not a
5 release by -- well, first of all, this isn't a court
6 approval of a release in the same sense that the
7 court approves a debtor in possession's decision to
8 release a claim or a trustee's decision to release a
9 claim. This is part of a proposed plan.

10 Secondly, this isn't a release by the
11 debtor, and I don't know that Copexa factors are
12 applicable to a release that the creditor's committee
13 is making.

14 MR. HOFMANN: I think it does. I think it
15 does.

16 MS. JARVIS: Your Honor, we will be
17 putting on evidence as part of the confirmation
18 hearing on the Copexa standards --

19 THE COURT: Oh, that helps.

20 MS. JARVIS: -- applies. You know, we
21 just haven't got to that point yet.

22 THE COURT: All right.

23 MR. HOFMANN: Your Honor, I think we're
24 entitled to challenge that evidence and test it.

25 MR. HAVEL: I think that's going to come

1 from the creditor's committee chairman, not from
2 Mr. Robertson.

3 THE COURT: Well, I hate to limit evidence
4 or exclude evidence or participation based on
5 standing but, I mean, I -- we -- we have a plan here
6 that all the creditors have voted for, and equity
7 that has questionable standing and questionable
8 benefit under any plan are the only ones opposing the
9 plan.

10 I'm going to allow the questioning, but
11 you're going to have to get to relevancy quickly.

12 MR. WILSON: Your Honor, after all of
13 that, I believe we have determined that I was the
14 first to be turned away from broader --

15 MR. BLUMENTHAL: Wait. Wait. Wait.
16 Wait. Wait. Your Honor, rather than do some
17 ping-pong today --

18 THE COURT: Yeah, I think it would make --
19 yes, Mr. Blumenthal. I think it would make more
20 sense if we just continue Mr. Hofmann's line of
21 questioning and then you can cover what he doesn't
22 cover, Mr. Wilson.

23 MR. WILSON: I'm not offended, your Honor.
24 Thanks.

25

CROSS-EXAMINATION CONTINUED

BY MR. HOFFMAN:

Q. (By Mr. Hofmann) Mr. Robertson, are you familiar with the circumstances under which 5.6 million dollars was directed from certain sales proceeds to Bay North? Are you familiar with those circumstances?

MR. HAVEL: I object, your Honor. That relates to a dispute which WestLB is not part of at all.

THE COURT: Well, I think he's just asking if he's aware of that.

Q. (By Mr. Hofmann) Are you aware of that?

A. I am aware of it.

Q. And do you know who directed that payment?

A. No.

Q. Was it WestLB?

A. As far as the actual direction of it, I don't know.

Q. WestLB was involved in that transfer, wasn't it?

A. Yes, we were involved.

Q. Explain to me how WestLB was involved.

MR. HAVEL: I object, your Honor. This witness said that he didn't get involved in the

1 credit until late 2008. These are questions about a
2 transaction in February of 2008.

3 MR. HOFMANN: The witness clearly knows
4 that WestLB was involved.

5 MR. HAVEL: The next question asked a lot
6 more than whether he knew about it.

7 THE COURT: Okay. He's testified that he
8 was aware that WestLB was involved.

9 Q. (By Mr. Hofmann) Do you know how WestLB
10 was involved?

11 A. No.

12 Q. How do you know that WestLB was involved?

13 A. I know that this transaction took place.
14 I do not know the particulars of exactly who made
15 what decisions when or where.

16 Q. You weren't involved in those decisions?

17 A. That is correct.

18 Q. How do you know that WestLB was involved
19 then?

20 MR. HAVEL: Asked and answered, your
21 Honor. Objection.

22 THE COURT: Sustained.

23 Q. (By Mr. Hofmann) Were you told that
24 WestLB was involved?

25 MR. HAVEL: Object. Asked and answered.

1 THE COURT: Mr. Hofmann, he's testified he
2 knows that WestLB was involved, but he doesn't know
3 any of the details of the involvement.

4 MR. HOFMANN: Well, certainly there must
5 be some source of information, unless it's divined,
6 that would allow him to know how it was involved. I
7 think I'm entitled to know that.

8 MR. BLUMENTHAL: Your Honor, the other --
9 the other issue is, this case has been pending for
10 quite some time. This is not the time and place for
11 a deposition to go fishing around for facts that have
12 absolutely no relevancy to this hearing.

13 The -- this particular equity security
14 holder who has doubtful hearing -- standing in this
15 particular hearing in this particular case had more
16 than enough time if they wanted to do any kind of
17 fishing expedition or depositions for the last nine
18 months.

19 MR. HOFMANN: The plan was proposed eight
20 days ago.

21 MR. BLUMENTHAL: And it hasn't changed
22 anything whatsoever as to equity.

23 MR. HOFMANN: Then there should be no
24 reason we need a release.

25 THE COURT: All right. We don't need to

1 argue, counsel.

2 MR. HOFMANN: Understood.

3 THE COURT: I'll let the witness answer
4 the last question.

5 Mr. Robertson, the question was: How do
6 you know WestLB was involved?

7 THE WITNESS: I have inherited the
8 portfolio which comes with a history which indicates
9 that this is something that transpired.

10 Q. (By Mr. Hofmann) And what did that
11 history indicate transpired?

12 A. It indicated that there was a payment
13 of -- I don't recall the specific amount. Well,
14 first of all --

15 THE COURT: Excuse me, Mr. Robertson.

16 Now I'm wondering what the relevancy is,
17 Mr. Hofmann. I mean, Mr. Blumenthal has correctly
18 stated that early on in the case, the debtors' claims
19 against WestLB were released. And at that time it
20 was made clear that that was only a release by the
21 debtor, not by other parties, but it was a release by
22 the debtor.

23 And is your line of questioning going to
24 potential claims that the debtor may have against
25 WestLB?

1 MR. HOFMANN: It's claims the estate has
2 through the committee against WestLB.

3 MR. HAVEL: Your Honor, the committee had
4 a deadline to file their Complaint. The only
5 Complaint they filed was for equitable subordination.
6 There's never been a committee assertion of any of
7 these claims. They were, in effect, abandoned when
8 the committee chose to pursue only equitable
9 subordination.

10 MR. HOFMANN: There's been an equitable
11 subordination lawsuit filed. The proponents have
12 proposed to compromise that litigation. I think I'm
13 entitled to explore the nature of those claims that
14 they wish to release through this plan.

15 MR. HAVEL: Your Honor, there -- there
16 either is a misunderstanding or mischaracterization
17 of equitable subordination. An equitable
18 subordination case, even if successful, would not
19 generate any value for the equity holders. It would
20 merely flip the priority, permit the unsecured
21 creditors to get paid ahead of WestLB, but WestLB
22 would get every cent of its claim paid before any
23 money flows upstream to the Mezzanine lender, let
24 alone all the way to Park City.

25 So, again, I see no economic interest and

1 no relevancy for this examination.

2 THE COURT: I don't see the relevancy,
3 Mr. Hofmann.

4 MR. HOFMANN: So -- so I understand the
5 Court's ruling, are you refusing to allow me to ask
6 questions that are related to the estate's lawsuit
7 against WestLB?

8 THE COURT: The estate's lawsuit against
9 WestLB?

10 MR. HOFMANN: The committee has filed a
11 lawsuit against WestLB.

12 THE COURT: But that's not the estate's
13 lawsuit.

14 MR. HOFMANN: The committee has filed a
15 lawsuit against WestLB. And if the Court is -- is
16 directing me, you can't ask those questions, of
17 course, I'll abide.

18 THE COURT: Well, it would probably make
19 more sense to have these questions asked in the
20 context of the Copexa factors and after the
21 committee's made its testimony.

22 MR. HOFMANN: I'm happy to wait.

23 THE COURT: So we're trying to --

24 MR. HAVEL: Your Honor, Mr. Robertson
25 isn't here for any settlement testimony and he won't

1 be available after this session.

2 THE COURT: Well, looking down the road, I
3 think it's going to be in everyone's best interest if
4 we let the testimony in, but will you please make it
5 quick, Mr. Hofmann?

6 MR. HOFMANN: I'll do what I can, your
7 Honor. Again, this has been proposed on eight days'
8 notice.

9 THE COURT: I've heard that. I've heard
10 that. But I also don't believe that it has affected
11 equity, and that's going to be -- I'm going to have
12 to see more than what I've seen so far to show that
13 equity at the level that your client is at is
14 affected by this plan.

15 MR. HOFMANN: Okay.

16 Q. (By Mr. Hofmann) Mr. Robertson, you
17 testified concerning the money that was received by
18 Bay North. It was about 5.6 million dollars, true?

19 A. Correct.

20 Q. Is there an inter-creditor agreement
21 between WestLB and Bay North?

22 A. Yes.

23 Q. Did the inter-creditor agreement require
24 that payment to be made?

25 A. I don't recall the specifics.

1 Q. At the time the payment was made, did
2 WestLB maintain a lockbox related to this loan to the
3 debtor?

4 A. I don't recall.

5 Q. Before the bankruptcy filing, did WestLB
6 have a lockbox account related to this loan?

7 A. Yes.

8 Q. What's the purpose of that lockbox
9 account?

10 A. To control the flow of funds.

11 Q. You testified under questioning by
12 Mr. Wilson that this loan went into default in
13 late 2009, true?

14 A. Correct.

15 Q. What was the basis of the default?

16 MR. HAVEL: Your Honor, sometimes
17 witnesses just make clearly obvious errors.

18 THE COURT: I agree.

19 MR. HAVEL: This debtor filed in September
20 of '09. I don't know if that would influence the --
21 I mean, the record is clear, it was in default much
22 before the fall of '09 and I think Mr. Robertson just
23 got his years mixed up.

24 Q. (By Mr. Hofmann) Is that your testimony?

25 A. Excuse me?

1 Q. What is your testimony? When did this
2 loan go into default the first time?

3 A. September 2008.

4 Q. And what was the basis that a default was
5 first declared on this loan?

6 A. It was an interest payment default.

7 Q. Do you know how much money was in WestLB's
8 lockbox at the time it declared that interest
9 default?

10 MR. HAVEL: Your Honor, I'm not sure I
11 understand the relevancy of loan history for either
12 settlement purposes or good faith purposes. This is
13 ancient history about a loan that had multiple
14 defaults.

15 MR. HOFMANN: Your Honor, it would be a
16 lot faster if there weren't constant interruptions
17 and objections, recognizing counsel's right to do
18 that. This bank forced this debtor into bankruptcy
19 and has now bought a release for very little to get
20 out of it.

21 MR. BLUMENTHAL: Your Honor, again,
22 counsel's history is -- his belief of history is not
23 correct throughout this case. We filed because there
24 was a UCC sale scheduled by Bay North. I don't
25 believe WestLB had taken any judicial or nonjudicial

1 action against the debtor.

2 MR. HAVEL: That's correct, your Honor.

3 MR. HOFMANN: Well, perhaps counsel wishes
4 to testify.

5 THE COURT: Well, it's history in the
6 case, Mr. Hofmann. The bankruptcy was precipitated
7 because of the pending sale by Bay North, and the
8 characterization that WestLB forced the debtor into
9 bankruptcy, I mean, that is a characterization,
10 but --

11 MR. HOFMANN: Admittedly.

12 THE COURT: I'm going to allow just a
13 little -- a few more questions, Mr. Hofmann.

14 THE BAILIFF: Mr. Robertson, we're having
15 a hard time hearing you, so you need to speak up and
16 see if you can pull that as close as you can to you.

17 THE WITNESS: We'll -- we'll try and do
18 better here.

19 THE CLERK: Thank you.

20 Q. (By Mr. Hofmann) So I believe my last
21 question was how much money was in the lockbox at the
22 time that WestLB declared the default.

23 A. I do not know.

24 Q. How much money was in the lockbox at the
25 time you took over this credit?

1 A. I don't recall.

2 Q. Was it about three million dollars?

3 A. Not in the lockbox, to my recollection.

4 Q. Was it over two million dollars in the
5 lockbox?

6 A. I believe the number was closer to three
7 million dollars, but I don't believe it was in a
8 lockbox.

9 Q. Okay. And had the money been used in that
10 account before WestLB declared a default to pay the
11 interest payments to WestLB?

12 A. I don't recall the specific applications
13 of funds and when they came and out of which accounts
14 they were paid.

15 Q. You don't know that the money was used to
16 pay the interest from that account before?

17 MR. HAVEL: Asked and answered, Judge.

18 THE COURT: Sustained.

19 Q. (By Mr. Hofmann) Do you know why it is
20 that Bay North declared a default on this -- on the
21 debtor?

22 MR. HAVEL: Objection. Speculative.

23 MR. HOFMANN: I asked if he knew.

24 THE WITNESS: No, I don't know the
25 specifics.

1 Q. (By Mr. Hofmann) You don't know about a
2 cross-default provision?

3 A. I don't know the specifics.

4 MR. HOFMANN: I have no further questions.

5 THE COURT: All right. Mr. Wilson?

6 MR. WILSON: Thank you, your Honor.

7
8 CROSS-EXAMINATION

9 BY MR. WILSON:

10 Q. Mr. Robertson, we need to get you home to
11 New York and in your -- so you can sleep in your own
12 bed tonight.

13 I at one time had pursued a line of
14 questioning about the structure of WestLB through its
15 New York office, and I'll try to resume somewhat
16 where we left off.

17 But first, there is this -- this name
18 Erste -- E-R-S-T-E -- Abwicklungsanstalt (ph).

19 Is that the EAA name that you had
20 difficulty pronouncing?

21 A. I think you've done as well as I can do.

22 Q. Thank you. For somebody from Southern
23 Idaho that can't even speak English, that's my best
24 effort. Is that -- is that --

25 A. I believe it is.

1 Q. All right. And it is defined in the -- in
2 the plan supplement as the sole member of the company
3 West -- or the company Heber Avenue Partners, LLC
4 proposed to be the reorganized debtor. Do you
5 understand that to be true?

6 A. I understand that the -- that WestLB will
7 own that still on behalf of EAA who will retain the
8 credit risk associated with this asset.

9 Q. I -- I'm going to explore that and you'll
10 have to just forgive me a little bit. I'm -- I need
11 to make sure I clearly understand.

12 So I'm going to just read from paragraph
13 nine of the plan supplement, which is filed herein as
14 document 575 on June 21. Paragraph nine, it just
15 says, "The reorganized debtor." And this -- let me
16 ask this: Is the reorganized debtor Heber Avenue
17 Partners, LLC? Will it be?

18 A. Yes. It is intended to be, yes.

19 Q. Thank you. Don't have one yet, but if
20 everybody gets their wishes, that will be the result
21 of today's hearing, that the new company, Heber
22 Avenue Partners, LLC, will be the reorganized debtor,
23 correct?

24 A. Correct.

25 Q. Now, paragraph nine says, "The reorganized

1 debtor will be managed by its sole member, EAA, a
2 successor in interest for certain assets of WestLB."

3 All right. Do you agree with that
4 sentence?

5 A. It will be still owned by WestLB on behalf
6 of EAA.

7 Q. When you say "it," what do you mean, "it"?
8 What does --

9 A. Heber -- Heber will be the -- the
10 reorganized debtor will be owned -- or will be an
11 affiliate of WestLB for the benefit of EAA.

12 MR. HAVEL: Mr. Wilson, I'm no -- I might
13 help this out a little bit.

14 MR. WILSON: I'm willing to be --

15 MR. HAVEL: Thank you.

16 MR. WILSON: -- taught. I just -- I don't
17 want to burden this --

18 MR. HAVEL: I'll try to --

19 MR. WILSON: If you need to clarify,
20 I'll --

21 MR. HAVEL: No. The plan -- the plan
22 supplement was accurate when it was filed on
23 the 21st. The plan term sheet, which is attached
24 to -- I'm sorry, the term sheet for financing, which
25 is attached to Mr. Robertson's new declaration,

1 reflects structural changes in the ownership. No
2 changes in the economics, but one of the structural
3 changes is that EAA is not going to be the direct
4 owner. It is going to be WestLB through an affiliate
5 in a relationship with the EAA.

6 So when Mr. Robertson asks you for kind of
7 an elaborate explanation, it's only because of
8 internal structuring. And that's either for
9 political or tax reasons. I'm not sure I understand
10 why, but it's not meant to change any of the
11 substance or the fact that Heber Avenue Partners will
12 remain the reorganized debtor.

13 MR. WILSON: Your Honor, I know it's
14 unusual to confer with counsel, but can I -- I need
15 to understand this and I'm not sure I do.

16 THE COURT: Well, you can confer with
17 counsel if we can speed this up.

18 MR. WILSON: I'm sorry, your Honor. And I
19 hope --

20 THE COURT: Well, I -- all right. I'm --
21 I'm going to just tell you, I'm frustrated with --

22 MR. WILSON: That makes two of us.

23 THE COURT: Well, no. I -- I don't want
24 any red herrings. I don't -- I want to get to the
25 real substance of objections. And if we can't keep

1 focused on that, then I'm going to address the
2 standing issue and I'm going to come back next week
3 and I'm going to have counsel argue it. And that's
4 what we're going to do unless we can get moving
5 through this quickly. So please consult with
6 Mr. Havel.

7 MR. WILSON: I need to make sure I
8 understand what he --

9 Your Honor, could you give us a minute?
10 We're -- this -- this is going to inure for the
11 benefit of the Court.

12 THE COURT: All right. Court will take a
13 brief recess.

14 THE BAILIFF: All rise.

15 (Recess taken from 2:28 until 2:33 p.m.)

16 THE BAILIFF: All rise. Court resumes in
17 session. Please be seated.

18 Q. (By Mr. Wilson) Mr. Robertson?

19 A. Yes.

20 Q. Have I got the name correct? Sorry.
21 Thank you for spending a few moments with me during
22 the break.

23 Is it true that EAA is a separately formed
24 and separately existing corporation from WestLB?

25 A. Yes.

1 Q. It's a German corporation; is that
2 correct?

3 A. I don't know its exact legal standing.

4 Q. It doesn't matter. Thank you. And it is
5 a separately capitalized, separately owned, legal
6 entity; is that correct?

7 A. Yes.

8 Q. All right. And is it true that the loan
9 originally made by WestLB to the debtor is now owned
10 by EAA?

11 A. Correct.

12 Q. And that EAA being separately capitalized
13 and separately owned, that WestLB's only involvement
14 with this is in a capacity of a servicer of this
15 loan?

16 A. There is a servicing agreement, yes.

17 Q. All right. Is there another capacity
18 besides servicing?

19 A. I don't know if there's any other
20 arrangements --

21 Q. All right.

22 A. -- but that's the primary arrangement.

23 Q. All right. And -- and WestLB's stake in
24 this loan is as a servicer and that it has no upside
25 nor downside for this loan other than what it derived

1 from the servicing agreement; is that correct?

2 A. Correct.

3 Q. Are you employed by EAA?

4 A. No.

5 Q. Are you employed by WestLB?

6 A. Yes.

7 Q. And you have this position, executive
8 director --

9 A. Correct.

10 Q. -- have I got that correct?

11 And so you're not here as a
12 representative -- direct representative or an
13 employee of the owner of the loan; is that correct,
14 but rather -- excuse me -- but rather as a
15 representative of the servicer?

16 A. Who is acting on behalf of EAA through the
17 servicing agreement.

18 Q. Okay. But is the answer to my question
19 then, yes, that you're here in your capacity for the
20 servicer of the loan, not the owner of the loan?

21 A. I'm not sure I distinguished between those
22 two.

23 Q. Okay. That will be sufficient. But your
24 paycheck comes from WestLB, not from EAA?

25 A. Correct.

1 Q. Thank you. Is there anybody in WestLB
2 more senior to you that has direct responsibility for
3 this -- what I'm going to call the WestLB loan?

4 A. Can you rephrase?

5 Q. Well, I don't know if I can. What I'm
6 really trying to find out is -- well, I'll approach
7 it this way: Do you have direct responsibility for
8 the WestLB loan?

9 A. Again, I'm not exactly sure what --

10 Q. Okay. You're the executive director --

11 THE BAILIFF: Mr. Robertson, we can --
12 we're recording and so we can't hear you.

13 THE WITNESS: Sorry. There we go.

14 THE BAILIFF: Okay. Thank you.

15 Q. (By Mr. Wilson) I'm just really -- I'm
16 really trying to find out what your role is with
17 regard to this credit. And just -- I'll do the best
18 I can.

19 So you have -- you have direct
20 responsibility through your employment. The scope of
21 your duties, does it give you direct responsibilities
22 for this loan?

23 A. This loan is in my responsibility for my
24 capacity within WestLB.

25 Q. Is there anybody in WestLB that is more

1 senior to you that has direct responsibility?

2 A. Again, I guess I'm -- I'm not exactly
3 following as to what responsibility is. I mean,
4 that's a very broad question.

5 Q. Yeah, it really is, and I'm just not smart
6 enough to know --

7 Are you in charge of this -- this loan --
8 this WestLB loan?

9 A. I do not make the -- or I'm not
10 responsible for final decisions on anything in this
11 portfolio.

12 Q. Okay. Who -- who is -- who is responsible
13 for making decisions with regard to the WestLB loan
14 claim filed in this case?

15 A. The application was put forward and it was
16 recommended to EAA and EAA made the final decision.

17 Q. So your -- your involvement, your personal
18 involvement, was to send a message or a proposal or
19 something over to EAA; is that correct?

20 A. Through my team and with other colleagues,
21 yes.

22 Q. Okay. Where do -- where do you fit in on
23 the team? The team leader --

24 A. I'm exec -- I'm executive director within
25 the credit department.

1 Q. How many people --

2 A. I have -- I have one of my -- I have five
3 people on my team. I have one person which has an
4 analytical responsibility within my team. There are
5 other parts as well. We have a workout group and we
6 have members on the workout group who are also
7 involved in this. We take a team approach to
8 managing an asset.

9 Q. Very good. Are you the team leader?

10 A. I would co-head --

11 THE COURT: All right. Mr. Wilson, what's
12 the relevancy of the questioning?

13 MR. WILSON: The judge would probably like
14 to have me in chains and I'm frustrated, too.

15 Here -- we have a -- we have a plan
16 proposed by WestLB. They don't own the note.

17 MR. HAVEL: Your Honor, can I --

18 MR. WILSON: There are some decisions --
19 excuse me -- there are some decisions that have been
20 made about the plan that -- on the table is good
21 faith. I would just really like to find somebody who
22 is responsible for having made the decisions that
23 relate to the components of the plan. This is the
24 gentleman who has been put forward, I hope, I assume
25 for that purpose. And I don't see anybody else on

1 the roster who will speak on behalf of EAA or WestLB
2 on that subject.

3 And if the Court is frustrated, so am I.
4 But I -- I propose to have some questions about who
5 made the decision to -- as to the plan provisions.
6 That's where I'm going. I can't seem to get there.
7 They're relevant. If nothing else, we've elicited
8 that the proponent of this plan doesn't own the loan.
9 Let's start there and work our way down to a whole
10 series of other relevant issues and I can't get an
11 answer. That's my speech.

12 MR. HAVEL: Your Honor, the ownership of
13 the loan was never contended. WestLB in the plan is
14 defined as the agent for parties that hold the loan.
15 And so to characterize this as something new or
16 different -- WestLB, as the agent for the loan,
17 obviously runs the loan but makes recommendations to
18 third parties. I don't know why it's so complicated.

19 Mr. Wilson is now suggesting there's some
20 ultimate authority that he wants to talk to as
21 opposed to the agent who administers the loan and
22 obviously at some point seeks approval from senior
23 parties. But Mr. Robertson is here as the
24 representative of WestLB, who is familiar with the
25 loan and the plan.

1 And, you know, if you want to find out if
2 recommendations were made and changed or if he
3 adopted recommendations, that's relevant. But to
4 search up and down a corporate chart doesn't seem to
5 be where we want to go. If he really wants to know
6 who made the decisions, we brought Mr. Robertson.

7 MR. BLUMENTHAL: Your Honor, the other
8 point is, whatever the internal decisions were at
9 WestLB and EAA are -- are, frankly, irrelevant. The
10 relevant issue before the Court today is whether the
11 4.5 million being contributed is sufficient funds to
12 confirm this plan. And whether the plan as proposed
13 satisfies the elements of the code, this line of
14 questions on the -- purportedly in the guise of good
15 faith, I think, to use a phrase that your Honor had
16 used earlier, is somewhat of a red herring.

17 MR. WILSON: May I respond briefly?

18 THE COURT: Yes.

19 MR. WILSON: Good faith is a crucial
20 element. It's the core of the objection of my
21 clients. And I'm going to say the plan's been on the
22 table for eight days and I'm going to run, but it's
23 true. And this has not evolved in an ordinary
24 fashion with regard to many of the issues. So
25 that's -- that's where I am.

1 THE COURT: Well, back -- back to your
2 line of questioning.

3 MR. WILSON: Sure. Please.

4 THE COURT: Why isn't Mr. Havel right that
5 WestLB is the representative of the owner of the
6 note, the servicer, and represents EAA with respect
7 to the plan negotiations?

8 MR. WILSON: Well, I don't know that I've
9 made that motion, but I'm -- my questions were trying
10 to get to the bottom of the ownership and
11 relationship of the parties, and I'm trying to find
12 out, maybe not very artfully and fairly
13 unsuccessfully, who's calling the shots within
14 WestLB.

15 THE COURT: Well, and then why isn't
16 Mr. Blumenthal correct that -- that the issue before
17 the Court really is not how WestLB made its -- or EAA
18 made its decision, but here's what's proposed?

19 MR. WILSON: I'd like to find out who made
20 the decisions so I can question them on the effort --
21 on the issues of good faith. Somebody made a
22 decision to give a --

23 THE COURT: All right. So let's do this.
24 Why don't you articulate the elements and the claim
25 you have for bad faith.

1 MR. WILSON: For bad faith?

2 THE COURT: I'm not -- I'm not getting it
3 yet.

4 MR. WILSON: Okay. And then I'm not doing
5 my job very well. At the end of the day, I might not
6 get there. And -- and this is the broadest picture
7 ever.

8 THE COURT: Well, I don't want the
9 broadest picture ever. I want some elements that
10 constitute a legal basis for me to say that there's
11 not good faith. I want to understand that.

12 MR. WILSON: Okay. Well, I haven't gotten
13 some of the evidence yet, but I fully expect --

14 THE COURT: Well, so let's pretend that
15 this is a complaint and you're outlining your
16 complaint for me.

17 MR. WILSON: Sure. I'm going to do it.
18 Let's just pick one thing, and it has to do with the
19 liquor licenses. Mr. Shoaf, who is a member of the
20 debtor -- manager of the debtor here and who filed to
21 put this case in and has been filing statement
22 schedules and proposals and filed the plan and signed
23 the plan, is equity. Equity suffers the same fate as
24 is usual in Chapter 11s. And that -- there's very
25 little for them.

1 He also is a holder of a 50 percent
2 interest in 1.6 million dollars in claims that he
3 holds jointly with what I'm going to call the
4 Wickline interest, just because it's a little bit of
5 a structure. So Mr. Shoaf orchestrates an ouster
6 from management of his coequal partner, Mr. Wickline.

7 We'll -- we'll show that --

8 THE COURT: These are -- these are
9 allegations, Mr. Wilson.

10 MR. WILSON: These are allegations, okay.
11 Sure. And then he puts it into bankruptcy without
12 consultation, and then he proposes a plan where he
13 gives up his half interest in the 1.6 million dollar
14 claims at the same time he gives away Mr. Wickline's
15 half interest in those claims. And in exchange, he
16 gets a two-year employment contract for unspecified
17 duties -- probably won't be hardly anything -- and he
18 gets -- and that's -- that's part of it.

19 And then there are some liquor licenses
20 that belong to the entity, Management, that
21 Mr. Wickline and Mr. Shoaf held jointly.

22 I believe the evidence will show that,
23 just amazingly enough, after Mr. Wickline was booted
24 from management and ceased to be consulted with, that
25 Mr. Shoaf personally took efforts to transfer those

1 licenses into his own name to an entity under his --
2 totally under his control. And then the plan
3 supplement says, okay, Mr. Shoaf, if you can help us
4 keep continuity until we get -- we get those licenses
5 transferred to us, the reorganized debtor, we shall
6 give you another 240,000. And just amazingly enough,
7 the combination of that employment contract and that
8 sale of the liquor licenses, which we submit have
9 been misappropriated, are just -- and the little --

10 THE COURT: Well, is it a misappropriation
11 of the debtor's asset?

12 MR. WILSON: The answer is no, but -- but
13 he's selling it to this debtor for 240,000 bucks.

14 MR. BLUMENTHAL: I object to that, your
15 Honor.

16 MR. WILSON: Okay.

17 MR. BLUMENTHAL: There will be zero
18 scintilla of evidence on that. And by the way,
19 Mr. Wilson hasn't uttered one word on his bad faith
20 argument that relates to Mr. Duncan's testimony,
21 which I submit is one big filibuster.

22 MR. WILSON: Well, I'll tell you what,
23 your Honor, there isn't one person in this courtroom
24 that wants to get out of here more than me, and
25 I'll -- but these are crucial issues. And here's --

1 and let me just make one point --

2 THE COURT: Well, they're crucial issues
3 for your client, Mr. Wilson, but it sounds to me like
4 it's a dispute between two equity holders. And maybe
5 Mr. Shoaf has been more successful than Mr. Wickline.
6 I have no idea what's gone on or what's transpired.
7 But if I have a debtor in bankruptcy and -- I mean,
8 unless you can show that this is bad faith on the
9 part of the debtor, that's -- that's where I'm
10 struggling with.

11 MR. WILSON: Well, I think the debtor is
12 controlled by Mr. Shoaf. He's going to
13 profit 720,000-plus dollars, and here's the deal and
14 this is it and what I've got, what I hope to prove,
15 is that WestLB, when it decided to go over and join
16 in this plan, they have gone into league with this
17 debtor and its principal and that conduct is bad
18 faith. And to perpetuate that -- those bad acts in
19 the context of a plan, I would submit is bad faith.
20 If the Court doesn't agree with me, I'm happy to
21 abide the Court's ruling because that's your job and
22 not mine.

23 THE COURT: Well --

24 MR. HAVEL: Your Honor, might I make an
25 observation or two in this regard?

1 I think there's two elements about the
2 characterization of Mr. Wilson that need testing, or
3 at least we would challenge. The first is that these
4 facts relate to the issue of the plan and the bad
5 faith at all. These facts are a claim by
6 Mr. Wickline that Mr. Shoaf breached his duties in
7 operating the management company. Those are claims
8 that Mr. Wickline has and this plan does not purport
9 to take any of those claims away. We do not create
10 any releases in favor of Mr. Shoaf. We do not create
11 any injunctions against Mr. Wickline suing him. We
12 don't even prevent Mr. Wickline from claiming maybe
13 he should get some of the liquor license money. He
14 can do anything he wants between those two parties.
15 It does not constitute bad faith if those two parties
16 have a disagreement about whether Mr. Shoaf did the
17 right thing or not.

18 The second point -- and this is one where
19 I think we have to be careful about the words -- bad
20 faith or the absence of good faith in the
21 confirmation of the plan has developed case law. And
22 the test for that is set forth in our brief in a much
23 more accurate way in that we point out that the
24 characteristics that go to the question of good faith
25 or bad faith are the level of participation of all

1 the parties, the fairness and openness of the
2 negotiations and the extent of it or whether the
3 parties all had a chance to participate. It has
4 nothing to do with whether one party said another one
5 breached a duty among the two entities.

6 And I think that the word bad faith can
7 encompass a number of things, but in this case, bad
8 faith for the plan does not include a breach of duty
9 between two members. I think that is our view as to
10 why this should be narrowed, and I join with
11 Mr. Blumenthal in the observation it doesn't involve
12 WestLB. And to say after Mr. Shoaf has done, you
13 know, three pages of bad things, one sentence, oh,
14 and we think WestLB must have known about it, so
15 they're also in bad faith, that proves nothing and
16 there's no record to prove that.

17 MR. WILSON: Okay. And getting back to
18 the questions, and I just want to be as straight as I
19 can with the Court. And where I was attempting to go
20 with my questions, if I could establish what role
21 Mr. Robertson played with regard to the negotiations
22 of the plan terms and the decisions, I was going to
23 ask him some questions about that and that would go
24 to the good faith because it would -- it's part of
25 the -- the party consultation and participation. And

1 so that's -- that's it. I can't -- I can be no more
2 clear. I'm -- I'll --

3 THE COURT: Well, I hope you can be more
4 clear. If you can focus and limit your questions to
5 Mr. Robertson on the negotiations, how WestLB
6 determined to get in as a joint plan proponent, that
7 might be relevant.

8 MR. WILSON: I was -- I was working my way
9 up. I was trying to find out, unsuccessfully, what
10 role he -- what -- what his responsibility -- scope
11 of his responsibilities were.

12 THE COURT: Well, just ask -- just ask him
13 if he got -- if he was part of the negotiations.

14 MR. WILSON: I'm willing to -- all right.
15 I was trying to lay a little foundation, but I'm
16 willing to just take the Court's lead.

17 Q. (By Mr. Wilson) Were you involved in the
18 negotiations of the plan terms?

19 A. There was a team together at WestLB. I'm
20 part of the team which works together to -- has
21 worked together, with advice of counsel as well, to
22 come up with a recommendation to put forward which --

23 Q. Good.

24 A. -- which we did.

25 Q. Are you part of that team?

1 A. I am part of that team.

2 Q. And there are five members, did you say on
3 the team -- or so? Don't let me put words in your
4 mouth.

5 THE COURT: He may not be talking about
6 the same team that he was talking about previously,
7 Mr. Wilson.

8 MR. WILSON: I --

9 THE WITNESS: There are roughly four
10 people on the team.

11 MR. WILSON: Thank you. I'm sorry, your
12 Honor.

13 Q. (By Mr. Wilson) Who besides you? Just
14 very quickly.

15 A. James Winicker (ph), Nancy Tafoya (ph),
16 Ranata Gonchico (ph).

17 Q. Okay. And -- and was your testimony that
18 you work as a team and nobody has really executive
19 responsibility --

20 A. Myself and Nancy Tafoya take the lead
21 roles.

22 Q. Thank you. Okay. Now, were you involved
23 in the negotiations of the terms that are found in
24 the amended WestLB, Easy Street Partners amended
25 plan?

1 A. I was part of the team, yes.

2 Q. Would the answer then be, yes, you were
3 involved?

4 A. Yes.

5 Q. Thank you. And who made the decision to
6 extend to Mr. Shoaf a -- an employment contract
7 for \$240,000 a year for two years?

8 A. That has been an item which has been
9 negotiated over a period of several weeks.

10 Q. The question is, who was involved -- or
11 were you involved?

12 A. Yes.

13 Q. Yes. Good. And were you involved in the
14 decision to propose to pay to Mr. Shoaf \$240,000 for
15 services or involvement in the liquor license
16 transfer?

17 MR. BLUMENTHAL: Objection. That's a
18 total mischaracterization of what occurs under the
19 employment agreement, as well as the Utah laws
20 concerning liquor licensing, as well as his
21 categorization of what the employment agreement does.

22 THE COURT: Can you rephrase the question,
23 Mr. Wilson?

24 MR. WILSON: I can try.

25 Q. (By Mr. Wilson) Were you involved in

1 negotiating the provision of the employment contract
2 that would pay to Mr. Shoaf \$240,000 for certain
3 services in connection with liquor licenses?

4 A. Yes.

5 Q. Thank you. In the course of your
6 involvement in that particular term of the agreement
7 and plan, were you aware that -- that there was any
8 dispute with regard to the ownership of the liquor
9 licenses?

10 MR. BLUMENTHAL: Objection, your Honor.
11 Liquor licenses aren't owned in the state of Utah.
12 There is no foundation for that question and I object
13 to it.

14 MR. WILSON: How about if I say ownership
15 or control?

16 MR. BLUMENTHAL: Same objection.

17 MR. WILSON: If I just said liquor
18 licenses? I'm negotiating.

19 MR. BLUMENTHAL: If he asks an appropriate
20 question I won't object.

21 THE COURT: All right. Restate your
22 question.

23 Q. (By Mr. Wilson) In connection with your
24 negotiations -- involvement in negotiations on the
25 liquor license issues, are you aware that there was

1 any dispute as to Mr. Shoaf's ability to act on
2 behalf of the entity whose name is affiliated with
3 the licenses?

4 A. No.

5 Q. Thank you. Do you know of one now? Do
6 you know that there might be some dispute now?

7 A. It has been raised in the court.

8 Q. Very good. Thank you.

9 Do you know Mr. Shoaf personally?

10 A. I have met him on several occasions.

11 Q. Very good. And was -- is WestLB pleased
12 with Mr. Shoaf's management of the debtor
13 organization up to this point?

14 A. I know he has had a long experience with
15 this. We understand that.

16 Q. What is your -- would you answer the
17 question? Is WestLB pleased with his performance as
18 manager for this debtor and other debtor entities?

19 A. We have had some question as to whether or
20 not --

21 Q. Whether or not what?

22 A. -- there -- there are other resources that
23 can be brought to bear, but we also recognize his
24 standing within the community and his relationship
25 with the property and understand that that is a

1 benefit.

2 Q. And does WestLB have criticism or take
3 exception to the management of Mr. Shoaf prior to the
4 filing of the bankruptcy petition?

5 MR. BLUMENTHAL: Objection. I think
6 that's irrelevant.

7 THE COURT: What's the relevancy,
8 Mr. Wilson?

9 MR. WILSON: Something -- well, if -- if
10 he says yes, then I'll say, what's changed? And the
11 Court can say, I -- I sustain the objection, and we
12 can move on.

13 THE COURT: I sustain the objection.

14 MR. WILSON: Thank you.

15 THE COURT: Okay.

16 MR. WILSON: Let me consult my notes
17 because I think I may be near the end of my inquiries
18 here. One last question.

19 Q. (By Mr. Wilson) According to the plan, if
20 it is confirmed, is it not true that E -- I hope I
21 get the initials right --

22 A. EAA?

23 Q. -- EAA will hold notes and loans on the
24 property secured by the property?

25 A. They will have -- it's unclear at this

1 point as to the exact structure, but they, at the end
2 of the day, have the risk of this asset, which is
3 still managed by WestLB.

4 Q. Are you saying that there aren't to be
5 loans -- there aren't to be loans from the
6 reorganized debtor to the -- to EAA?

7 A. Yes, there will be loans.

8 Q. There will be loans. All right.

9 MR. HAVEL: I'm sorry. Are you speaking
10 about the restructuring of the existing loan as
11 opposed to new advances?

12 MR. WILSON: Yes. That's what I'm --

13 MR. HAVEL: Okay. I'm sorry. I just --
14 it wasn't clear to me whether you were talking about
15 new money.

16 MR. WILSON: And I need all the help I can
17 get. That's -- that's it.

18 Q. (By Mr. Wilson) Do you understand the
19 question relating to the restructuring of the
20 existing loans? I want to be fair with you.

21 A. Well, repeat the question and I will --

22 Q. So EAA is going to be the lender for the
23 other restructured loans --

24 A. Yes.

25 Q. -- on properties secured by the assets of

1 the debtor and with the reorganized debtor being the
2 new borrower.

3 Is that -- have I got that right?

4 A. Yes.

5 Q. Thank you. And also EAA will become 100
6 percent owner of the equity in the reorganized
7 debtor; is that correct?

8 A. Directly or indirectly, yes.

9 Q. Well, directly, right?

10 A. Yes.

11 Q. They're going to own it, right?

12 A. They will own it.

13 Q. Good. So -- so EAA is going to be both
14 the holder of secured notes owed by an entity that it
15 will own 100 percent of; Have I got that right?

16 A. Through -- I mean, recognizing there is --
17 it will be a separate company, which will be owned
18 probably by an affiliate of WestLB, again, for the
19 economic interest of EAA. This will be based on tax
20 issues or structural issues. But for all economic
21 purposes, the risk goes back to EAA.

22 MR. WILSON: Okay. Thank you. You've
23 been kind and the Court's been generous. Thank you.

24 MR. BLUMENTHAL: I have no questions. No
25 more -- no redirect.

1 THE COURT: Mr. Robertson, you may be
2 excused.

3 MR. ROBERTSON: Thank you.

4 THE COURT: Not only do you step down, you
5 can go get your plane.

6 MR. BLUMENTHAL: I'm ready to call the
7 next witness, your Honor.

8 THE COURT: All right.

9 MR. BLUMENTHAL: I would call Mr. Shoaf to
10 the witness stand. We'd note that all of the parties
11 had agreed to the proffer except Mr. Wilson and
12 Mr. Hofmann's predecessor at counsel table, so we'll
13 just proceed and put him on.

14 THE COURT: All right.

15 THE BAILIFF: Please step forward and
16 raise your right hand.

17

18 WILLIAM SHOAF,

19 called as a witness, being duly sworn, was
20 examined and testified as follows:

21 THE BAILIFF: Please take the witness
22 stand, state and spell your name.

23 MR. SHOAF: My name is William Shoaf,
24 S-H-O-A-F.

25

DIRECT EXAMINATION

BY MR. BLUMENTHAL:

Q. What is your address, sir?

A. 4780 Winchester Court, Park City, Utah.

Q. And can you briefly describe for the Court your education.

A. I'm a graduate of the Cornell University School of Hotel Administration with honors from 1975. It's a bachelor of science degree.

Q. And can you describe the curriculum at -- at that -- that that degree represents at the school that you attended?

A. It is a business school that specializes in training people in hospitality, development and management and finance.

Q. And could you briefly describe to the Court your business background?

A. I have 35 years in hotel and resort business, as well as the club business involving management, redevelopment, and -- and reorganization.

Q. And can you describe some of the projects you've worked on leading up to today?

A. I have worked for corporate entities such as Rosewood Hotels in Dallas and Houston. I've worked for Auberge Resorts in Santa Barbara. I've

1 worked for Princess Hotels abroad in Bermuda.
2 Individually, I've worked for Mr. Redford at Sundance
3 Resorts. I've also been involved with the royal
4 family of Saudi Arabia in Elbow Beach and as well as
5 with Chairman Goto in the redoing of the Mauna Lani
6 Bay Hotel on the Big Island of Hawaii.

7 Q. And when did you move to Park City?

8 A. I came to Park City in 1990 -- well, in
9 Park City in 1994, came to Utah in 1991 to take over
10 Sundance Resort for Mr. Redford.

11 Q. Okay. And what have you done in Park
12 City?

13 A. In Park City, I have been involved in
14 consulting on the Hotel Park City and also with the
15 Sky Lodge project in Park City.

16 Q. Okay. What is your current position with
17 Easy Street Partners?

18 A. I am a co-manager.

19 Q. And can you describe your duties at the
20 hotel -- at the Sky Lodge?

21 A. At the Sky Lodge I have been providing the
22 general manager duties for the property since it
23 opened, which includes the general day-to-day
24 supervision of the property, managing the financials
25 of the property, P&Ls, being involved in all

1 regulatory and licensing issues, community relations,
2 homeowner association issues, as well as liaising
3 with the community and the owners.

4 Q. So basically you run the Sky Lodge?

5 A. That's correct.

6 Q. Now, since this case was filed in --

7 A. September.

8 Q. -- September '09 -- I have to keep track
9 of the years, your Honor, they're going by quite
10 rapidly -- did you have additional duties then with
11 regard to financial reporting concerning Easy Street
12 Partners?

13 A. Yes. I was asked to take on the
14 additional responsibilities that related to providing
15 reports to the trustee appointed by the Court, to
16 providing the additional reporting for the bank
17 during this period, to oversee the weekly payment
18 draws that were required as a part of the cash
19 stipulation, to get involved with EDRC, which is a
20 co-manager that was placed in -- in the project with
21 Gemstone by the Court to develop a new business plan
22 and new pro formas and to get -- to provide them with
23 assistance with potential new investors.

24 Q. And you've prepared and overseen the
25 monthly operating reports that get filed with the

1 Court?

2 A. Every one of them, yes, sir.

3 Q. And you oversee and prepare all of the
4 budgets that are submitted to WestLB, the weekly and
5 bimonthly reconciliations; is that correct?

6 A. That is correct.

7 Q. As such, is it safe to say that you are
8 intimately familiar with Easy Street Partner's
9 business operations?

10 A. Yes, I am.

11 Q. As well as their financial condition?

12 A. Yes, I am.

13 Q. And, by the way, with regard to managing
14 the Sky Lodge, is anyone else actually involved in an
15 executive capacity in management?

16 A. No, sir.

17 Q. I'd ask you to -- do we have -- you have
18 an exhibit book in front of you. I would ask you to
19 turn to Exhibit 2.

20 Do you have that in front of you?

21 A. Yes.

22 Q. And could you identify it?

23 A. This is the amended plan that was
24 submitted on June 16th.

25 Q. And did you sign that document on behalf

1 of Easy Street Partners?

2 A. Along with Philo Smith, yes.

3 Q. And who is Philo Smith?

4 A. He is the other co-manager.

5 Q. And are you familiar with the terms of the
6 plan?

7 A. Yes, I am.

8 Q. And you were involved with counsel in
9 negotiating the terms of the plan?

10 A. Yes, I was.

11 Q. All right. We're going to go through --

12 MR. BLUMENTHAL: Your Honor, I would like
13 to just admit that as an exhibit, the joint plan.

14 THE COURT: Is there any objection?

15 MR. WILSON: No objection, your Honor.

16 MR. HOFMANN: None.

17 THE COURT: Has it been marked as an
18 exhibit?

19 MR. BLUMENTHAL: Yeah. It is Exhibit 2 in
20 the binder.

21 THE COURT: All right. Exhibit 2 is
22 received.

23 (Exhibit-2 received.)

24 Q. (By Mr. Blumenthal) Now, I want to go
25 through a general description of the plan and the

1 plan negotiations. Are you familiar with the
2 treatment of Jacobsen, Class 2 creditor under the
3 plan?

4 A. Yes.

5 Q. Can you --

6 A. They will receive 1.33 million dollars
7 upon confirmation and will, as a result of that,
8 remove the liens on the property and complete the
9 limited warranty work that's left.

10 Q. Okay. Were you involved directly in
11 negotiating those terms with -- I think it's
12 Mr. Kirkham, who's the principal of Jacobsen?

13 A. Yes, sir, I was.

14 Q. And do you know what their total claim is?

15 A. Approximately 17 -- 1.75 million.

16 Q. Okay. And they've agreed and you've
17 negotiated a reduction of their claim to facilitate
18 confirmation of the plan?

19 A. Yes.

20 Q. With regard to Class 4 unsecured
21 creditors, are you familiar with that -- the --
22 strike that.

23 Are you familiar with their treatment
24 under the plan?

25 A. Yes, I am. They -- the -- the -- that

1 class of people have the option to either elect to be
2 paid 100 percent over three years or to be paid 60
3 percent at confirmation and -- and be taken care of.

4 MR. BLUMENTHAL: Your Honor, Richard
5 Kirkham had filed a declaration concerning the amount
6 of the claim and that has been marked as Exhibit 3.
7 We would move that into evidence.

8 THE COURT: Is there any objection?

9 MR. HOFMANN: None.

10 MR. WILSON: None, your Honor.

11 THE COURT: Exhibit 3 is received.

12 (Exhibit-3 received.)

13 Q. (By Mr. Blumenthal) Sir, I turn your
14 attention to Exhibit 4 and I ask you to identify that
15 document, whether you're familiar with it.

16 A. Yes. It's a listing of all the Class 4
17 unsecureds.

18 Q. Okay. The general unsecured trade
19 creditors primarily?

20 A. Yes.

21 Q. And what -- and did -- who prepared that
22 schedule?

23 A. I did in conjunction with our accounts
24 payable and controller and counsel.

25 Q. And did you also look at the claims

1 register to see the amount of claims that had been
2 filed?

3 A. Yes, we did.

4 Q. And this is your best understanding of the
5 total amount of claims; is that correct?

6 A. That is correct.

7 Q. And what is the total amount of general
8 unsecured creditors in Class 4?

9 A. \$979,243.28.

10 MR. BLUMENTHAL: Your Honor, I would ask
11 that this document be admitted into evidence.

12 THE COURT: Any objection to Exhibit 4?

13 MR. HOFMANN: None.

14 MR. WILSON: None for what it is.

15 Obviously, it omits the Management and Development
16 claims. I'm not going to -- I'll just -- I'll just
17 note that.

18 MR. BLUMENTHAL: Your Honor, this is
19 Class 4.

20 MR. WILSON: Class 4.

21 THE COURT: Exhibit 4 is received.

22 (Exhibit-4 received.)

23 Q. (By Mr. Blumenthal) Sir, Class 5 in the
24 plan, which treats the homeowners, do you understand
25 what their treatment is under the plan?

1 A. Yes. The homeowners, due to the actions
2 with regards to paying off Jacobsen, will have the
3 liens on their properties removed and the limited
4 warranty work that has been agreed to be done by
5 Jacobsen but has been delayed up until now will be
6 completed.

7 Q. And have you interacted with the
8 homeowners throughout this case?

9 A. Yes. On a -- sometimes on a daily basis.

10 Q. And you've, in essence, kept them calm and
11 they haven't filed any lawsuits; is that correct?

12 A. To date?

13 Q. Yes.

14 A. Yes.

15 Q. And you heard me read the ballot report.
16 Every homeowner who's voted has voted to accept the
17 plan, correct?

18 A. That's correct.

19 Q. With regard to Class 3, which are -- was a
20 catchall for other secured creditors, is it correct
21 that Wells Fargo is the only creditor in that class?

22 A. Yes. That's for two vans that are on a
23 long-term purchase loan -- an auto loan basically for
24 the company.

25 Q. And that loan is current, sir?